

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: Chapter 7 Case

Jerry Michael Dearly, Jr. and Lorri Ann Dearly, Bky. No. 04-34179-GFK

Debtors.

**NOTICE OF HEARING AND MOTION FOR OBJECTION TO
CLAIMED EXEMPT PROPERTY AND MEMORANDUM OF LAW**

TO: THE DEBTORS AND OTHER ENTITIES SPECIFIED IN LOCAL RULE 9013-3:

1. Nauni Jo Manty, Trustee of the bankruptcy estate of the above-named Debtors ("Trustee"), moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at **1:30 p.m. on October 25, 2004**, before The Honorable Gregory F. Kishel, Chief Judge of the Bankruptcy Court, in Courtroom No. 228B, at the U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota, or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than October 20, 2004, which three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 14, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition was filed under Chapter 7 on July 16, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 522, Minn. Stat. §550.37, Fed. R. Bankr. P. 4003, and Local Rule 4003-3. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9001-1 to 9006-1 and 9013-1 to 9013-5. The Trustee requests relief with respect to the Debtors' claimed exempt property.

6. The Debtors have scheduled real property located at 2117 Manitou Ave., St. Paul, Minnesota, legally described as Lot 19, except the south 19 feet thereof and Lot 20, Block 1, Den E. Lanes Nokomis Park Addition, Ramsey County, Minnesota with a current market value of \$111,100.00, which is their homestead in St. Paul, Minnesota (hereinafter the "Homestead"). The Debtors have exempted \$4,300.00 of the Homestead under 11 U.S.C. § 522(d)(1). Attached as Exhibit A hereto is the Ramsey County Real Estate Property Characteristic Information disclosing that the value of the Homestead is \$151,300.00. The Debtors testified at the 341 Meeting of Creditors that they do not dispute the valuation of \$151,300.00 for the Homestead. The Debtors owe \$107,000.00 on their Homestead. As such, the Debtors may have as much as \$44,300.00 in equity in the Homestead.

7. 11 U.S.C. § 522(d)(1) allows the Debtors to exempt their Homestead. 11 U.S.C. § 522(d)(1) limits the exemption to \$18,450.00 per Debtor in value. Because the equity in the Debtors' Homestead is greater than \$36,900.00, the Trustee requests that the Debtors' Homestead exemption be limited to \$36,900.00 in value.

WHEREFORE, the Trustee moves the Court for an order sustaining Trustee's objection to claimed exempt property to the extent that the Debtors' Homestead exemption exceeds \$36,900.00.

Dated this 22nd day of September, 2004.

/s/ Nauni Jo Manty

Nauni Jo Manty

Trustee in Bankruptcy

Attorney ID No. 230352

Rider Bennett, LLP

333 South 7th Street, Suite 2000

Minneapolis, MN 55402

(612) 340-7900



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Property Identification 26.29.22.42.0049
Number (PIN)

Property Address 2117 Manitou Ave
St. Paul 55119-3525

MP Link

Assessment Date 01-02-2003

01-02-
2004

Tax Payable Year 2004 2005

Total Estimated Market \$144,600 \$151,300
Value

Total Taxable Market \$111,100 \$127,800
Value

Property Class **Res. Hstd** **Res. Hstd**
Description

Estimated Land Value \$39,800 \$57,100

Estimated Building Value \$104,800 \$94,200

Estimated Market Value \$144,600 \$151,300

Taxable Market Value \$111,100 \$127,800

Limited Market Value \$111,100 \$127,800

**Value of New
Improvements**

Green Acres Value

Plat Deferment

This Old House Exclusion



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EXHIBIT

A

Ramsey County is currently experiencing problems with our email system, if you do not receive a reply from us within the next business day, please call our Customer Service Center at 651 266 2000 and we will be happy to help you. Thank you for your patience

VERIFICATION

I, Nauni Jo Manty, the movant named in the foregoing Notice of Hearing and Motion for Objection to Claimed Exempt Property, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated this 22nd day of September, 2004.

/s/ Nauni Jo Manty
Nauni Jo Manty, Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 7 Case

Jerry Michael Dearly Sr. and Lorri Ann Dearly, Bky. No. 04-34179-GFK

Debtors.

I, Donna M. Voth, declare under penalty of perjury that on September 22, 2004, I served copies of the attached **Notice of Hearing and Motion for Objection to Claimed Exempt Property and Memorandum of Law and Unsworn Certificate of Service** by first class U.S. mail, to the following parties:

Jerry and Lorri Ann Dearly 2117 Manitou Avenue St. Paul, MN 55119	United States Trustee 1015 U.S. Courthouse 300 So. Fourth St. Minneapolis, MN 55415
Jeffrey A. Leiviska 921 Main Street Hopkins, MN 55343	

Executed on September 22, 2004.

/e/Donna M. Voth

Donna M. Voth
Legal Administrative Assistant
Rider Bennett LLP
333 South Seventh Street
Suite 2000
Minneapolis, MN 55402

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: Chapter 7 Case
Jerry Michael Dearly, Sr. and Lorri Ann Dearly, Bky No. 04-34179-GFK
Debtors.

ORDER

This matter came before the Court on the motion by Nauni Jo Manty, the Trustee for the Bankruptcy case of Jerry Michael Dearly, Sr. and Lorri Ann Dearly (the “Trustee”) for Objection to Claimed Exempt Property legally described as: Lot 19, except the south 19 feet thereof and Lot 20, Block 1, Den E. Lanes Nokomis Park Addition, Ramsey County, Minnesota (the “Homestead”). Appearances were noted in the record at the time of the hearing. Based upon the files and records, the Court makes this Order pursuant to the Rules of Bankruptcy Procedure.

IT IS ORDERED: The Trustee’s objection to the Homestead to the extent it exceeds \$36,900.00 is sustained.

Dated: _____

Gregory F. Kishel
Chief United States Bankruptcy Judge